

REMARKS

This is in response to the Office Action mailed on December 20, 2004, and the references cited therewith.

Claims 1, 3, 5, 11, 16-22, 50, 54 and 62 are amended, claim 2 is canceled, claims 64-72 are added; as a result, claims 1 and 3-72 are now pending in this application.

Claim 2 has been canceled solely to advance the prosecution of the present application, and without prejudice to its further prosecution in an appropriately filed continuing or divisional application.

The amendments made herein have been to clarify the claims and are not intended to limit the scope of equivalents to which any claim element may be entitled. The amendments to the claims and new claims have support throughout the specification, including on pages 12-13. No new matter has been added as a result. Applicant respectfully requests reconsideration of the above-identified application in view of the amendments above and the remarks that follow.

§102 Rejection of the Claims

Claim 1

Claim 1 was rejected under 35 USC § 102(b) as being anticipated by Connor (U.S. Patent No. 5,455,110).

The Office Action asserts that Connor teaches various elements of the claims.

Applicant respectfully submits that the Examiner has not established a *prima facie* case of anticipation of the present claims. Anticipation under 35 USC § 102 requires the disclosure in a single prior art reference of each element of the claim under consideration. *In re Dillon* 919 F.2d 688, 16 USPQ 2d 1897, 1908 (Fed. Cir. 1990) (en banc), *cert. denied*, 500 U.S. 904 (1991). It is not enough, however, that the prior art reference discloses all the claimed elements in isolation. Rather, “[a]nticipation requires the presence in a single prior reference disclosure of each and every element of the claimed invention, *arranged as in the claim.*” *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 730 F.2d 1452, 221 USPQ 481, 485 (Fed. Cir. 1984) (citing *Connell v. Sears, Roebuck & Co.*, 722 F.2d 1542, 220 USPQ 193 (Fed. Cir. 1983)) (emphasis added). “The *identical invention* must be shown in as complete detail as is

contained in the ... claim." *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 USPQ2d 1913, 1920 (Fed. Cir. 1989); MPEP § 2131 (emphasis added).

Connor discusses a fabric comprising a single three-dimensional nonwoven web located between first and second spunbond webs.

In contrast, claim 1, as amended, recites a nonwoven laminate comprising at least one layer of tufted material located between at least two outer layers of non-woven material wherein the nonwoven laminate does not contain elastic materials or fibers between the at least two outer layers and wherein the at least one layer of tufted material is one layer of a bi-layer structure, the bi-layer structure also comprising one of the at least two outer layers of non-woven material.

Applicant cannot find, in Connor, an at least one layer of tufted material wherein the at least one layer of tufted material is one layer of a bi-layer structure, the bi-layer structure also comprising one of the at least two outer layers of non-woven material. Rather, the three-dimensional nonwoven web in Connor is limited to a single layer located between first and second spunbond webs. Connor, therefore, does not appear to teach each element of claim 1.

Connor does not anticipate the claims, as amended. Applicant respectfully submits that claim 1 is allowable in its present form. Notification to this effect is respectfully requested.

Claims 1 and 5

Claims 1 and 5 were rejected under 35 USC § 102(e) as being anticipated by Latimer (U.S. Publication No. 2001/0009711 A1).

Applicant does not admit that Latimer is prior art and reserves the right to swear behind it at a later date. Nevertheless, Applicant respectfully submits that the claims are distinguishable over Latimer for the reasons argued below.

The Office Action asserts that Latimer teaches various elements of the claims. Applicant traverses the assertion on page 3 of the Office Action that the corrugated material in Latimer can be equated with the tufted material of the present invention which comprises at least two layers "oriented inwardly to produce an internally tufted laminate," as recited in claim 5, as amended.

Applicant respectfully submits that the Examiner has not established a *prima facie* case of anticipation of the present claims. Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.

Latimer discusses a corrugated nonwoven web bonded such that no gaps are present between the folds of the web.

In contrast, claim 1, as amended, recites the elements noted above.

Applicant cannot find, in Latimer, an at least one layer of tufted material wherein the at least one layer of tufted material is one layer of a bi-layer structure, the bi-layer structure also comprising one of the at least two outer layers of non-woven material as recited in claim 1, as amended.

Further in contrast, claim 5, as amended, recites a nonwoven laminate comprising at least two layers of tufted material oriented inwardly to produce an internally tufted laminate, wherein the nonwoven laminate does not contain elastic materials or fibers between the at least two layers. Applicant notes that the phrase "internally tufted" laminate clearly refers to a laminate having tufts oriented inwardly. Although those skilled in the art would understand that original claim 5 was reciting a laminate having tufts oriented inwardly, Applicant has added the term "inwardly" for additional clarification.

Applicant also cannot find, in Latimer, an internally tufted laminate as recited in claim 5, as amended. Rather, the three-dimensional nonwoven web in Latimer is limited to single layers oriented in the same direction, as shown in FIG. 10, so that there are no gaps between the folds (See Par. 74 and Abstract). Latimer, therefore does not appear to teach each element of either claim 1 or claim 5.

Latimer does not anticipate the claims, as amended. Applicant respectfully submits that claims 1 and 5 are allowable in their present form. Notification to this effect is respectfully requested.

Claims 1, 2, 4-7, 12-15, 22-33, 50-59, 60-61 and 63

Claims 1, 2, 4-7, 12-15, 22-33, 50-59, 60-61 and 63 were rejected under 35 USC § 102(e) as being anticipated by Lindsay et al. (U.S. Patent No. 6,610,173). Claim 2 has been cancelled, thus rendering the rejection to claim 2 moot.

Applicant does not admit that Lindsay is prior art and reserves the right to swear behind it at a later date. Nevertheless, Applicant respectfully submits that the claims are distinguishable over Lindsay for the reasons argued below.

The Office Action asserts that Lindsay teaches various elements of the claims. Applicant traverses the assertion on page 4 of the Office Action that the pair of plies in Lindsay can be equated with an internally tufted laminate as defined herein.

Applicant respectfully submits that the Examiner has not established a *prima facie* case of anticipation of the present claims. Anticipation requires the disclosure in a single prior art reference of each element of the claim under consideration.

Lindsay discusses a three-dimensional tissue.

In contrast, claim 1 as amended recites the elements noted above.

Applicant cannot find, in Lindsay, an at least one layer of tufted material wherein the at least one layer of tufted material is one layer of a bi-layer structure, the bi-layer structure also comprising one of the at least two outer layers of non-woven material as recited in claim 1, as amended.

Further in contrast, claim 5 recites the elements noted above and claims 22, 50 and 54, as amended, also recite a nonwoven laminate comprising at least two layers of tufted material oriented inwardly to produce an internally tufted laminate, wherein the nonwoven laminate does not contain elastic materials or fibers between the at least two layers.

Applicant also cannot find, in Lindsay, an internally tufted laminate as recited in claims 5, 22, 50 and 54. Rather, the three-dimensional tissue in Lindsay is limited to a pair of plies forming the opposing outer surfaces (See col. 31, lines 16-22). Lindsay, therefore, does not appear to teach each element of claims 1, 5, 22, 50 or 54.

Lindsay does not anticipate the claims, as amended. Applicant respectfully submits that claims 1, 5, 22, 50 and 54 are allowable in their present form. Since claims 4 and 60 depend from and further define claim 1, claims 6-7, 12-15 and 61 depend from and further define claim 5, claims 23-33 and 63 depend from and further define claim 22, claims 51-53 depend from and further define claim 50, and claims 55-59 depend from and further define claim 54, these claims are also believed to be allowable in their present form. Notification to this effect is respectfully requested.

§103 Rejection of the Claims

Claims 3, 8-11, 16-21 and 62 were rejected under 35 USC § 103(a) as being unpatentable over Lindsay et al (U.S. Patent No. 6,610,173) in view of Amundson et al. (U.S. Patent No. 6,028,018).

Applicants respectfully submit that Lindsay and Amundson are not prior art under §§102(e)/103(a) with respect to any claims of the present application. A reference that was prior art under former 35 USC 103 via §102(e) that was commonly owned with an application at the time the invention was made, cannot preclude patentability under 35 U.S.C. §103 of the claims of the application when the application was filed on or after November 29, 1999. *35 U.S.C. 103(c); 1233 OG 55 (April 11, 2000)*. The present application was filed on December 17, 2001, as shown by the attached copy of the Filing Receipt, which is after November 29, 1999. (A copy of the Filing Receipt was previously provided). Lindsay, Admunson, and the present application were, at the time the invention was made, owned by, or subject to an obligation of assignment to, the same person. Accordingly, both Lindsay and Admunson are commonly owned with the present application and are not prior art with respect to the present application.

Applicant respectfully requests withdrawal of the rejections and reconsideration and allowance of claims 3, 8-11, 16-21 and 62.

Applicant has amended claims 16-21, however, to remove reference to "wire-tufted" as the Examiner has indicated this phrase was given no patentable weight.

Conclusion

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at 515-233-3865 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

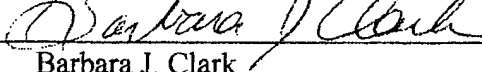
Respectfully submitted,

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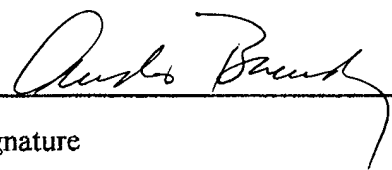
Date MARCH 7, 2005

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being deposited with the United States Postal Service with sufficient postage as first class mail, in an envelope addressed to: MS Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on this 7 day of March, 2005.

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